

REMARKS

Claims 1-16 are pending in this reissue application as of this Preliminary Amendment. Claims 1 and 10 are amended. Claims 2-9 and 11-15 remain in their original form as patented. Claim 16 is added in this amendment. Previously un-cited prior art entitled, "UNIQUE Landscape Rake and Grading Tool," (hereinafter "UNIQUE") has been submitted for consideration with this Reissue Application. A detailed discussion of the indicated amendments and reasons for patentability over the prior art follow below.

UNIQUE is prior art pertinent to the patentability of this invention in that it anticipates claims 1-2 of the patent under §102(b). UNIQUE discloses (claim 1) an implement for working soil comprising a main frame, a hitch mounted on the main frame for towing the main frame along a path, the main frame extending substantially transverse to the path, tines extending from the main frame and spaced from one another along the main frame, the main frame being adjustable to move the tines into and out of angular engagement with the soil, a subframe pivotally mounted to the main frame along a substantially horizontal axis, a blade mounted to the subframe substantially parallel to the mainframe, the subframe moveable about the axis between raised and lowered positions, a releasable latching means for latching the subframe in its raised position, and (claim 2) guides on the mainframe for preventing the subframe from substantial transverse movement.

In this Preliminary Amendment, Claim 1 has been amended to add scarifying teeth extending from the main frame and to define the specific order of the soil working tools, placing the scarifying teeth between the blade and the tines.

As amended, UNIQUE does not anticipate or render claim 1 obvious. UNIQUE does not disclose an implement for working soil having, in order from the hitch end or front toward the rear, a blade carried by a subframe pivotally mounted to the main frame, scarifying teeth extending from the main frame, and tines extending from the main frame. Nor would it have been obvious at the time of the invention to place these three soil working tools in that particular order. The order of the soil working tools is functionally

significant to the invention, and the prior art at the time of the invention taught away from such a combination. In the invention, the placement of the blade in front of the scarifying teeth serves the purpose of reducing the amount of compaction of the worked soil, as indicated in Patentee's affidavit. Placing the blade forward of the scarifying teeth also serves the purpose of knocking down vegetation and collecting rocks ahead of the scarifying teeth and tines as indicated in the specification at col. 3, lines 25-26 and in Patentee's affidavit. Although UNIQUE discloses an implement having the same three tools, the blade in UNIQUE is placed behind the scarifying teeth. As is apparent from the prior art of record and indicated in Patentee's affidavit, this was the common practice in the art at the time of the invention for the purpose using the blade to smooth the soil after being disturbed by the scarifying teeth. There would have been no motivation at the time of the invention to place the blade ahead of the scarifying teeth, because the current wisdom in the art at the time of the invention taught away from such a combination. Therefore, the subject matter of claim 1 would not have been obvious at the time of the invention.

The same reasons given for the patentability of claim 1 apply equally for claim 2. Therefore, claim 2 is neither anticipated nor rendered obvious by the prior art of record.

Claims 3-9, which remain in their original form as patented, are not anticipated or rendered obvious by UNIQUE. UNIQUE does not disclose a main frame comprising parallel main frame members in which both the tines and the scarifying teeth are carried by the same main frame member and the hitch is carried by the other main frame member. Nor would it be obvious to modify UNIQUE in this manner because UNIQUE would not work in the same manner as the invention of so constructed. Extending the scarifying teeth and tines from the same main frame member allow the implement to be used at multiple angles of attack into the soil to adjust the amount of scarifying or raking action produced by the scarifying teeth and tines by adjusting the angle of the main frame with the three point hitch as indicated in col. 1, lines 22-23 and col. 3, lines 57-59. This assembly also allows the teeth and tines to work together to help

control the penetration depth of the teeth as indicated in Patentee's affidavit. Because of the separated placement of the scarifying teeth and tines in UNIQUE, along with the mid-placement of the blade, the UNIQUE implement does not allow for adjusting the angle of attack by rotating its main frame. Rather, UNIQUE is obviously meant to be used with its main frame in a single, generally level orientation. There would have been no motivation to modify UNIQUE in the manner of claim 3.

In addition, UNIQUE does not disclose "multiple rigid scarifying teeth rigidly mounted on said other main frame member," which Examiner Novosad in the case indicated to be one reason for allowance (see p.2 in Notice of Allowance dated 25 March 1998). Rather, the scarifying teeth (forward set of chisels) in UNIQUE are flexibly mounted to the frame member with the flexible, curved arms. Nor would it be obvious to rigidly mount the scarifying teeth in UNIQUE because the flexible mounting arms are an integral part of that implement. The flexibility of the arms is needed to allow the teeth and arms to yield when an obstruction is encountered so that the teeth and arms do not break when, for example, they encounter a large rock. Therefore, the subject matter of claims 3-9 is neither anticipated nor rendered obvious by UNIQUE.

With regard to claim 9, in addition to the reasons already stated, UNIQUE does not render claim 9 obvious because it does not disclose the main frame member and the tines forming a scoop that can be used to catch soil when the implement is moved in the direction opposite the hitch, or rearwardly. In fact, the UNIQUE implement is essentially unusable in a reverse direction. Therefore, the subject matter of claim 9 would not have been obvious at the time of the invention.

With regard to claim 10, UNIQUE does not disclose guides including restraining members defining a channel therebetween, each of the subframe members including an extension slidably received in a guide channel. Therefore, UNIQUE neither anticipates nor renders obvious the subject matter of claim 10.

The same reasons given for claim 10 apply equally to claims 11-15.

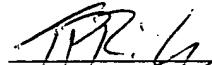
With regard to claim 14, in addition to the reasons already given for claim 10, UNIQUE neither discloses its scarifying teeth rigidly secured to the main frame nor does it disclose the scarifying teeth mounted between the tines and the blade. The scarifying teeth in UNIQUE are mounted on resilient arms that allow the teeth to give or move upwardly when encountering variations in the soil. This is not the same as the rigid securement of the scarifying teeth to the main frame as set forth in claim 14 and described in the specification. Therefore, in addition to both the reasons already assigned with regard to claim 10 and the reasons given with respect to claim 1, claim 14 is neither anticipated nor rendered obvious by UNIQUE.

With regard to claim 15, in addition to the reasons already given for claim 10, the same general reasons indicated for claim 9 apply equally to claim 15. Therefore, claim 15 is neither anticipated nor rendered obvious by UNIQUE.

Claim 16 has been added depending from claim 3. Claim 16 adds the limitation that the scarifying teeth are located between the blade and the tines. The same general reasons given with regard to claim 1 regarding the order of the soil working tools apply equally to claim 16. Therefore, claim 16 is neither anticipated nor rendered obvious by UNIQUE.

For these reasons, claims 1-16, as amended by this Preliminary Amendment, are in a position for allowance, notice of which is respectfully requested.

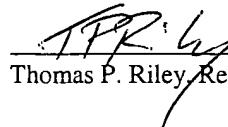
Respectfully Submitted,



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